

initiative. If the error was made more than six months before its discovery, the agency may exercise sound discretion in deciding whether to correct it, but, in any event, the agency must act promptly in doing so.

(2) An employing agency must promptly correct a contribution allocation error that occurred before May 1, 2001, on its own initiative if it is discovered within 30 days of its first occurrence. No contribution allocation error that occurred before May 1, 2001, may be corrected if it is not the subject of a timely discovery.

(b) *Participant's discovery of error.* (1) If an agency fails to discover an error of which a participant has knowledge involving the correct or timely remittance of a payment to the TSP (other than a contribution allocation error as covered by paragraph (b)(2) of this section, or a retirement system misclassification error as covered by paragraph (c) of this section), the participant may file a claim for correction of the error with his or her employing agency without a time limit. The agency must promptly correct any such error for which the participant files a claim within six months of its occurrence; the correction of any such error for which the participant files a claim after that time is in the agency's sound discretion.

(2) A participant may file a claim for correction of a contribution allocation error made before May 1, 2001, with his or her employing agency no later than 30 days after the participant receives a TSP participant statement first reflecting the error. The agency must promptly correct such errors.

(3) If a participant fails to file a claim for correction of an error described in paragraph (b)(2) of this section in a timely manner, the error will not be corrected.

(c) *Retirement system misclassification error.* Errors arising from retirement system misclassification must be corrected no matter when they are discovered, whether by an agency or a participant.

(d) *Agency procedures.* Each employing agency must establish procedures for participants to submit claims for correction under this subpart. Each

employing agency's procedures must include the following:

(1) The employing agency must provide the participant with a decision on any claim within 30 days of its receipt, unless the employing agency provides the participant with good cause for requiring a longer period to decide the claim. A decision to deny a claim in whole or in part must be in writing and must include the reasons for the denial, citations to any applicable statutes, regulations, or procedures, a description of any additional material that would enable the participant to perfect the claim, and a statement of the steps necessary to appeal the denial;

(2) The employing agency must permit a participant at least 30 days to appeal the employing agency's denial of all or any part of a claim for correction under this subpart. The appeal must be in writing and addressed to the agency official designated in the initial decision or in procedures promulgated by the agency. The participant may include with his or her appeal any documentation or comments that the participant deems relevant to the claim;

(3) The employing agency must issue a written decision on a timely appeal within 30 days of receipt of the appeal, unless the employing agency provides the participant with good cause for requiring a longer period to decide the appeal. The employing agency decision must include the reasons for the decision, as well as citations to any applicable statutes, regulations, or procedures; and

(4) If the agency decision on the appeal is not issued in a timely manner, or if the appeal is denied in whole or in part, the participant will be deemed to have exhausted his or her administrative remedies and will be eligible to file suit against the employing agency under 5 U.S.C. 8477. There is no administrative appeal to the Board of a final agency decision.

### **Subpart C—Board or TSP Record Keeper Errors**

#### **§ 1605.21 Plan-paid lost earnings and other corrections.**

(a) *Plan-paid lost earnings.* (1) Subject to paragraph (a)(3) of this section, if,

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because of an error committed by the Board or the TSP record keeper, a participant's account is not credited or charged with the earnings or losses that he or she would have received had the error not occurred, the participant's TSP account will be credited (or charged) with the difference between the earnings (or losses) it actually received and the earnings (or losses) it would have received had the error not occurred.

(2) Errors that warrant the crediting of earnings or charging of investment losses under paragraph (a)(1) of this section include, but are not limited to:

(i) Delay in crediting contributions or other monies to a participant's account;

(ii) Improper issuance of a loan or withdrawal payment to a participant or beneficiary which requires the money to be restored to the participant's account; and

(iii) Investment of all or part of a participant's account in the wrong investment fund(s).

(3) A participant will not be entitled to earnings under paragraph (a)(1) of this section if, during the period the participant's account received credit for less earnings than it would have received but for Board or record keeper error, the participant had the use of the money on which the earnings would have accrued.

(4) If the participant continued to have a TSP account, or would have continued to have a TSP account but for the Board or TSP record keeper error, earnings or losses under paragraph (a)(1) of this section will be computed for the relevant period based upon the investment funds in which the affected monies would have been invested had the error not occurred. If the participant did not have, and should not have had, an account in the TSP during this period, then the earnings will be computed using the G Fund rate of return for the relevant period and the monies returned to the participant.

(b) *Other corrections.* The Executive Director may, in his discretion and consistent with the requirements of applicable law, correct any other errors not specifically addressed in this section, including payment of lost earn-

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ings, if the Executive Director determines that the correction would serve the interests of justice and fairness and equity among all participants of the TSP.

### § 1605.22 Claims for correction of Board or TSP record keeper errors; time limitations.

(a) *Filing claims.* Claims for correction of Board or TSP record keeper errors under this subpart may be submitted initially either to the TSP record keeper or the Board. The claim must be in writing and may be from the affected participant or beneficiary.

(b) *Board's or TSP record keeper's discovery of error.* (1) Upon discovery of an error made within the past six months involving a receipt or a disbursement, the Board or TSP record keeper must promptly correct the error on its own initiative. If the error was made more than six months before its discovery, the Board or the TSP record keeper may exercise sound discretion in deciding whether to correct the error, but, in any event, must act promptly in doing so.

(2) For errors concerning contribution allocations or interfund transfers, the Board or the TSP record keeper must promptly correct the error if it is discovered before 30 days after the issuance of the earlier of the most recent TSP participant (or loan) statement or transaction confirmation that reflected the error. If it is discovered after that time, the Board or TSP record keeper may use its sound discretion in deciding whether to correct it, but, in any event, must act promptly in doing so.

(c) *Participant's or beneficiary's discovery of error.* (1) If the Board or TSP record keeper fails to discover an error of which a participant or beneficiary has knowledge involving a receipt or a disbursement, the participant or beneficiary may file a claim for correction of the error with the Board or the TSP record keeper without time limit. The Board or the TSP record keeper must promptly correct any such error for which the participant or beneficiary filed a claim within six months of its occurrence; the correction of any such error for which the participant or beneficiary filed a claim after that time is